

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE

Indianapolis, IN

CLARIAN HEALTH PARTNERS, INC.

Employer

and

Case 25-RC-10225

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL UNION NO. 103, AFL-CIO

Petitioner

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

On February 23, 2004, the Petitioner, International Union of Operating Engineers, Local 103, filed a petition seeking an election among skilled maintenance employees employed by the Employer, Clarian Health Partners, Inc., at two of its three acute care hospitals located in Indianapolis, Indiana: Indiana University Hospital (hereafter referred to as "IU") and James Whitcomb Riley Hospital (hereafter referred to as "Riley"). A hearing on this petition was held March 8-10, 2004, before a hearing office of the National Labor Relations Board, to determine the appropriate unit for collective bargaining. On June 9, 2004, a Decision and Direction of Election issued in which the undersigned concluded that a unit comprised of skilled maintenance employees who work at IU and Riley was an appropriate unit. The Employer filed a timely Request for Review of the undersigned's decision with the National Labor Relations Board, and on February 28, 2005, the Board issued its decision. (344 NLRB No. 28 (2005)) In its decision, the Board concluded that a unit comprised of skilled maintenance employees employed at IU and Riley, but not those employed at the third acute-care hospital owned by the Employer, Methodist Hospital (hereafter referred to as "Methodist"), was not an appropriate unit. The Board remanded the case to the Region for further appropriate action.

On March 22, 2005, the Petitioner filed an amended petition in which it sought an election within a skilled maintenance unit of employees who work at IU, Riley, and Methodist Hospitals.<sup>1</sup> Thereafter, although the parties were not able to agree upon all of the job classifications which should be included within the petitioned unit, they agreed upon the

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<sup>1</sup> The amended petition included the following positions (Note: numbers of employees in each position are set forth in parentheses) that were not included in the original: Tech Powerhouse (1), Waste Systems Operator (1), Linac Service Engineer (1), Technician Medical Equipment Repair (2), Technician II-Medical Equipment Repair (5), Radiological Service Engineer (10), and Tech-Biomedical Equipment I, II and III (8), (19), and (6), respectively.

inclusion and exclusion of some classifications, and also agreed that the record of the March 2004 hearing contained sufficient facts from which to make a determination concerning the placement of the disputed classifications. At the request of the undersigned, each of the parties submitted a supplemental post-hearing brief in which it identified the job classifications which it deemed in dispute, and the placement of the classifications which each party deemed appropriate.

Unless expressly indicated to the contrary herein, all findings of fact and conclusions of law contained in the Decision and Direction of Election dated June 9, 2004, are hereby reaffirmed and incorporated by reference.

## I. ISSUES:

### A. Job Classifications Which the Parties Agree Should be Included in a Skilled Maintenance Unit

The parties currently agree, as they did at the hearing herein, that certain job classifications included within the unit found appropriate by the undersigned in his June 2004 decision, should be included within any skilled maintenance unit. These classifications (which exist within the Facilities Department) are: Electrician, Technician - Control Systems, HVAC Technician, Maintenance Technician, Tech - Facilities Equipment, Locksmith, and Technician - Fire Systems. Additionally, the parties agree that the positions set forth in footnote 1 are properly in the unit.

In addition, the Petitioner now agrees that the position of Linac Service Engineer Trainee, whose unit exclusion it had previously urged, should be included within any skilled maintenance unit found appropriate by the undersigned. The Employer concurs with the inclusion, and the evidence supports the placement of this position within the unit found appropriate herein.

In its supplemental post-hearing brief the Employer withdrew its assertion that the position of Facilities Engineer should be included in a skilled maintenance unit. Since the parties now agree upon the exclusion of this position, and record evidence supports the exclusion, the position of Facilities Engineer is not included in the unit found appropriate herein.

### B. Job Classifications Whose Unit Placement is in Dispute

The Petitioner contends that the position of Design and Fabrication Machinist,<sup>2</sup> should be excluded from the appropriate unit on grounds that the classification does not share a community of interest with the other skilled maintenance employees. Specifically, it argues that this position has separate supervision and no interaction with other unit employees. Additionally, the Petitioner contends that because the incumbent performs his duties outside of the three facilities, the position should be excluded from the bargaining unit. The Employer contends that the Design and Fabrication Machinist should be included in the unit and argues that its stance is

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<sup>2</sup> One such position exists.

supported by the skill level and pay grade of the position. Specifically, the Employer maintains that the pay and skill of the work performed by the incumbent is comparable to that of other classifications included in the unit. Additionally, the Employer asserts that the position has substantial contact with other bargaining unit employees in the course of performing the duties thereof.

The Petitioner also contends that the position of Dispatcher (of which there are two) should be excluded from a skilled maintenance unit on grounds that persons in this position perform no skilled maintenance work and have different supervision than members of the petitioned unit. The Employer asserts that the Dispatchers should be included based largely upon the fact that they have regular contact with members of the petitioned unit, via their dispatching function.

The Petitioner contends that there is nothing in the Board's decision which requires that the Region reconsider its original conclusion that the position of Technician-Clinical Engineering Equipment Control<sup>3</sup> should be excluded from the petitioned unit. However, the Employer argues that the Regional Director should reconsider his decision on grounds that insufficient weight was given to the amount of repair and maintenance work performed by these positions.

The decision previously issued by the undersigned excluded the position of Respiratory Care Equipment Technician<sup>4</sup> from a skilled maintenance unit because, *inter alia*, it was concluded that persons in this position performed no skilled functions. At the hearing, the Employer urged the inclusion of this position within the unit, while the Petitioner opposed it. Neither party has addressed the unit placement of this position in its supplemental brief, but for purposes of this decision, it is presumed that neither party's position has changed, and therefore the Respiratory Care Equipment Technician is treated as a disputed position.

Three Radiological Service Engineers provide services exclusively to Wishard Memorial Hospital (hereafter referred to as "Wishard"), and it is the Petitioner's view that these positions should not be a part of the bargaining unit. As discussed in greater detail in the original decision herein, Wishard Hospital is not owned or operated by the Employer, but is owned by Marion County, a political subdivision of the State, and the county in which Indianapolis is located. The Petitioner maintains that these employees cannot be included within the bargaining unit without the consent of both Clarian and Wishard Hospital, citing Oakwood Care, Center, 343 NLRB No. 76 (2005). The Petitioner further argues that Wishard, as a public entity, is not covered by the Act. The Employer contends that the three Radiological Service Engineers should be included in a skilled maintenance unit, asserting that they share common duties, responsibilities, compensation, and benefits with other Radiological Service Engineers who are included in the unit found appropriate herein.

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<sup>3</sup> There were a total of 3 such positions at the time of the hearing.

<sup>4</sup> There are 11 employees who occupy this position.

The Petitioner maintains that two Maintenance Technicians who perform work at two of the many facilities (the Southeast Health Center and People's Health Center), owned and operated by the Employer which are located away from the three hospitals, should be excluded from the unit. It argues that not only do the incumbents assigned to these positions not work in any of the acute-care hospitals involved in this matter, but that the facilities to which they are assigned are not acute care facilities. It also asserts that their lack of common supervision is a further reason for their exclusion from the unit. The Employer, while admitting that neither of these employees works at one of the three acute-care facilities at issue, maintains that they should be included in the unit because duties, terms and conditions of their employment are the same as other Maintenance Technicians who were included in the bargaining unit in the earlier decision.

## II. DECISION

For the reasons discussed in detail below, including the presence of a community of interest between members of the petitioned unit and the classification of Design & Fabrication Machinist, it is concluded that this position shall be included in the unit found appropriate.

Since individuals who occupy the Dispatcher, Technician-Clinical Engineering Equipment Control, and Respiratory Care Equipment Technician positions perform little, if any, skilled maintenance functions and otherwise lack a community of interest with members of the unit found appropriate herein, they shall be excluded from the unit.

For the reasons discussed in greater detail below, it is concluded that record evidence is insufficient to make a reasoned decision regarding the proper placement of the Maintenance Technicians who work at the Southeast Health Center and at People's Health Center, and the Radiological Service Engineers who work at Wishard Hospital. Since only two employees who occupy the Maintenance Technician positions work outside of the acute-care hospitals, and three employees occupy the Radiological Service Engineer positions, these employees will be permitted to vote in the election ordered herein, subject to challenge.

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time skilled maintenance employees employed by the Employer at Riley Hospital for Children located at 702 Barnhill Drive, Indiana University Hospital located at 550 University Boulevard, and Methodist Hospital located at I-65 and 21st Street, Indianapolis, Indiana, including employees who occupy the positions of Electrician, Technician - Control Systems, HVAC Technician, Maintenance Technician, Tech - Facilities Equipment, Locksmith, Technician - Fire Systems, Tech - Powerhouse, Waste System Operator, Design and Fabrication Machinist, Linac Service Engineer, Linac Service Engineer Trainee, Technician - Medical Equipment Repair, Technician II - Medical Equipment Repair, Radiological Service Engineers, and

Tech - Biomedical Equipment I, II, and III; BUT EXCLUDING all Dispatchers, Technician-Clinical Engineering Equipment Control employees, Respiratory Care Equipment Technicians, Facilities Engineers, physicians, registered nurses, professional employees, technical employees, nonprofessional employees, business office clerical employees, guards and supervisors as defined by the Act, and all other employees.

The unit found appropriate herein consists of approximately 161 employees for whom no history of collective bargaining exists.<sup>5</sup>

### III. DISCUSSION

#### A. The Legal Framework

In determining an appropriate unit, the essential issue is whether the employees share a sufficient community of interest to require their inclusion within a single unit, Alois Box Co., Inc., 326 NLRB 1177 (1998); Washington Palm, Inc., 314 NLRB 1122, 1127 (1994). In determining whether employees share such a community of interest, the Board weighs a variety of factors, including similarities in wages or method of compensation; similar hours of work; similar employment benefits; similar supervision; the degree of similar or dissimilar qualifications, training, and skills; similarities in job functions; the amount of working time spent away from the facility; the integration of work functions; the degree of interchange between employees as well as the degree of employee contact; and the history of bargaining, NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985); Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

In regard to skilled maintenance units in the healthcare industry, the Board in its Second Notice of Proposed Rule Making, 284 NLRB 1515 (1987) described skilled maintenance employees as employees who deal with highly complex and sophisticated systems and equipment, and who are generally engaged in the operation, maintenance, and repair of a hospital's physical plant systems such as heating, ventilation, air-conditioning, refrigeration, electrical, plumbing, and mechanical, as well as their trainees, helpers, and assistants, Second Notice, *Supra* at 1556-1562. The Board also noted that skilled maintenance classifications typically require completion of high school, post-secondary training such as vocational or trade school in a specialty field, formal or informal apprenticeship programs; or an associate or baccalaureate degree, and also require continued education in technological changes in building maintenance, Jewish Hospital of St. Louis, 305 NLRB 955, 956 (1991).

The Board established six factors which distinguish skilled maintenance employees from other employees. These factors are essentially the same factors used to identify a community of interest among employees, Kalamazoo Paper Box Corp., *Supra*. They include: functions and skill level; education, licensing and training; supervision; wages, hours, and working conditions; interaction with other employees; and labor market and career path, Second Notice, *Supra* at 1556-1559. Further, the Board has held that a distinguishing feature of skilled maintenance

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<sup>5</sup> This number does not include the five employees who will be voted under challenge.

employees is that their work tasks involve equipment and systems rather than direct patient care tasks, Jewish Hospital of St. Louis, Supra. The Board has placed certain classifications of employees in a skilled maintenance unit even though they have been administratively placed in different departments by their employer and/or have different supervision, The Toledo Hospital, 312 NLRB 652 (1993); San Juan Regional Medical Center, 307 NLRB 117 (1992); Jewish Hospital of St. Louis, Supra.

B. The Disputed Positions

1. Design and Fabrication Machinist

The position of Design and Fabrication Machinist exists in the Clinical Engineering Department<sup>6</sup>. The single employee who occupies this position works in a machine shop which is located in a warehouse on Stadium Drive, near downtown Indianapolis, along with two other individuals. One of these individuals is a design and fabrication supervisor and/or leadperson, while the other is a manager in charge of the machine shop. The Machinist earns an hourly wage at Pay Grade 13, which is consistent with other classifications which have been included in the proposed unit. While the position requires no specific education or training, the position requires a level of skill which is not unlike those of other employees in the Clinical Engineering Department. The Machinist is responsible for specialized design and fabrication needs of the Department, including sophisticated medical equipment. He programs and operates such equipment as CNC controlled mills, grinders, drill presses, arbor presses, lathes, and surface grinders, and he also uses assorted hand tools. The Machinist aids in the design, service, repair, testing, installation and maintenance of biomedical related equipment and peripherals, including the mechanical design of various types of equipment such as patient electrodes, surgical tools and equipment mounting systems. The job description for the position indicates that knowledge in a variety of areas is preferred, including the ability to organize and operate a machine shop. The Machinist receives his work assignments from members of the Clinical Engineering Department who may be statutory supervisors, and who are in need of his particular skills. Despite the distant location of his work site, the record indicates that the Machinist regularly interacts with other members of the Clinical Engineering Department, and that his work is an integral part of the Department.

Based upon the complex nature of the skills possessed and functions performed by the Machinist; the fact that he works on much of the same equipment which is maintained and repaired by members of the petitioned unit; and the fact that he earns comparable wages, it is concluded that the position of Designed and Fabrication Machinist shares a sufficient community of interest with other members of the skilled maintenance unit to warrant its addition to the unit.

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<sup>6</sup> The terms "Clinical Engineering" and "Facilities" refer to the same department and are used interchangeably.

## 2. Dispatcher

There are two Dispatchers, both of whom work at Methodist Hospital and are members of the Facilities Department. These employees earn an hourly wage at Pay Grade 7, the lowest grade of all disputed classifications.<sup>7</sup> The Dispatchers receive incoming communications requesting maintenance and repair services; establish priorities; and place calls or page personnel, dispatching them to specific destinations. They also answer telephone calls and relay the calls to appropriate personnel or take messages. The record does not indicate, however, whether these Dispatchers relay work orders directly to employees of the Facilities Department, or only to supervisors/managers within the Department, or both. In addition, the record does not indicate whether the Dispatchers relay work orders to all members of the Facilities Department, or only to certain individuals. The duties of the Dispatchers do not include any repair or maintenance functions, and there are no specific educational or training requirements for this position. These employees only work during the day shift, while many of other Departmental positions are staffed twenty-four hours per day, seven days per week. When maintenance requests are received during hours the Dispatchers are not on duty, the requests are routed directly to the radios of the appropriate Facilities employees.

The position of Dispatcher shall be excluded from the petitioned unit. No rational argument can be made that this position shares a community of interest with the other classifications included in the proposed unit. The two employees who occupy these positions earn a wage at Pay Grade 7, lower than any classification included in the unit. The classification requires no specialized education or training. The position does not require any expertise or experience in any technical or craft specialty related to the work of the other unit members. Dispatchers perform no repair or maintenance functions, and all their work is performed in an office, where they receive and dispatch repair and maintenance calls to supervisors and/or employees. There is no evidence that there is any interchange between these employees and those in the classifications included in the bargaining unit. Further, the employees in this classification work a regular day shift schedule, unlike other members of the proposed bargaining unit, some of whom are required to provide 24-hour a day staffing.

In Ingalls Memorial Hospital, 309 NLRB 393, 399 (1992), the Board excluded from a skilled maintenance unit, positions which lacked the necessary skill and technical ability to satisfy the requirements of a skilled craft. Similarly, the Dispatchers possess no skills and perform no functions comparable to those possessed by members of the skilled maintenance unit. The fact that Dispatchers may have radio or other contact with unit members is alone insufficient to create a community of interest which would justify their joinder in the unit.

## 3. Technician - Clinical Engineering Equipment Control

According to the record evidence, there are three employees who occupy the Technician-Clinical Engineering Equipment Control position: two who are located at IU and one at Riley. Apparently there is no comparable position at Methodist Hospital. Employees in this position

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<sup>7</sup> The wage range for Pay Grade 7 is between \$9.44 and \$15.32 per hour. It was erroneously stated in the previous decision that the Dispatchers were paid at Grade 8.

earn a wage at Pay Grade 14. The major function of these employees is to track and distribute medical equipment throughout IU and Riley hospitals. They act as a liaison between nursing units and Clinical Engineering, and supply the nursing units with required medical equipment and peripherals such as hoses and cables. According to the testimony of an Operations Manager in the Clinical Engineering Department, these employees also perform preventative maintenance and repairs on less complex clinical equipment, such as hypothermia units. The job description for this position describes these duties as “minor.” In performing these duties, the employees use basic hand tools. The position does not require any specific education or training, although it does require familiarity with basic hand and machine tools, soldering, and other test equipment. These Technicians generally do not have any interaction with employees of the Facilities Department.

The original decision herein excluded the Technician - Clinical Engineering Equipment Control position from the skilled maintenance unit since the primary function of employees in this position is not that of servicing or repairing equipment, but of tracking and distributing equipment -- an unskilled function. In addition, no special educational coursework or experience is required for this position. While this classification engages in some minor repair work, it is a secondary function to its primary duties, and in performing these minor repairs the Technicians use only the most basic of tools, i.e. screwdrivers, and wrenches. If the equipment for which they are responsible needs more complex repairs, the Biomechanical Engineering Technicians are called upon to perform the repairs. In Toledo Hospital, 312 NLRB 652, 655 (1993), the Board affirmed the Regional Director’s decision to exclude Utilization Technicians from a skilled trades unit. Those employees, whose duties are strikingly similar to the Equipment Control Technicians in this case, were responsible for low level maintenance, inventory, and the supply of medical equipment. And like the employees at issue, the Utilization Technician positions required no specialized education or training. Accordingly, the undersigned reaffirms his original decision that employees in the Technician-Clinical Engineering Equipment Control position do not perform skilled maintenance functions, and do not share a sufficient community of interest with members of the petitioned unit to warrant their inclusion in the unit. Accordingly, they shall be excluded from the unit found appropriate herein.

#### 4. Respiratory Care Equipment Technician

As discussed in the undersigned’s previous decision, the eleven Respiratory Care Equipment Technicians are members of the Employer’s Respiratory Care and Diagnostic Services Department. Four of the disputed Technicians are assigned to Methodist, three to IU, and four to Riley. The Technicians are paid at Pay Grade 8, the second lowest among the pay grades discussed in this decision. The employees are responsible for processing respiratory equipment used to treat patients. Their duties include cleaning, disinfecting, assembling, testing equipment for proper function, troubleshooting and minor repairs. These functions are performed after a patient has used a machine or piece of equipment, to ready it for use by another patient. If a piece of equipment requires major repair, it is sent to the factory or elsewhere. There are no specific educational or training requirements for this position. Employees are provided on-the-job training, and according to the Employer’s Senior Vice President for Nursing and Patient Care, an individual can become fully trained in two months. However, unlike other positions in the proposed bargaining unit, these employees are required to know CPR.



Respiratory Care Equipment Technicians receive their job assignments from their immediate supervisors within the department. Unlike the other job classifications, this department is directly involved in patient care and treatment. While these employees wear uniforms, it is unclear whether they are the same uniforms worn by employees in the Facilities Department. Testimony indicates that these employees may work at facilities other than the one to which they are assigned; however, the record is unclear concerning the circumstances and frequency with which they occurs. The record does not identify the shifts these employees work. The Respiratory Care Equipment Technicians are indirectly supervised by the Director of the Respiratory Therapy Department, and directly supervised by one of two supervisors within the Department.

The Respiratory Care Equipment Technicians were excluded from the petitioned unit in the undersigned's previous decision because the positions require little specialized education or skill; they perform only cleaning and minor maintenance functions on non-complex equipment; they work in a clinical department; and their wages are considerably lower than other classifications in the skilled maintenance unit. In Ingalls Memorial Hospital, 309 NLRB 393, 399 (1992), the respiratory equipment technician position performed duties very similar to those performed by Clarian's Technicians. The Board there found that the positions lacked the necessary skill and technical ability to satisfy the requirements for inclusion within a skilled maintenance unit.

Since no new evidence or arguments have been presented which would warrant a reversal of the prior determination, it is again concluded that the Employer's Respiratory Care Equipment Technicians lack a community of interest with skilled maintenance employees, and therefore they shall be excluded from the unit found appropriate.

##### 5. Radiological Service Engineers at Wishard Hospital

There are three Radiological Service Engineers assigned to Wishard Memorial Hospital. As mentioned above, Wishard is owned by a political subdivision of the State. The Engineers earn a salary comparable to the range of Pay Grade 20. Clarian provides the Engineers to Wishard and Wishard reimburses Clarian for their wages. Although these Engineers are directed and supervised by Wishard personnel, they receive the same wages and benefits as other Clarian employees. The record does not reflect whether the hours and working conditions of these employees are comparable to those of Radiological Service Engineers who work at IU, Riley or Methodist Hospital. In Oakwood Care Center, *Supra*, the Board held that combined units of employees who are solely and jointly employed are permissible only with the consent of both employers. In the case at hand the record evidences no such consent. Moreover, the evidence is insufficient to determine whether Wishard and Clarian jointly employ the three Engineers who work exclusively at Wishard. Since a reasoned determination concerning their unit placement cannot be made, and since they represent less than 1% of the members of the petitioned unit, the employees who occupy the Radiological Service Engineer position who work at Wishard Hospital shall be permitted to vote at the election ordered herein, subject to challenge.

#### 6. Maintenance Technician - Southeast and People's Health Centers

There are two Maintenance Technicians who work primarily in two buildings located away from the campuses of the three hospitals. These employees perform work at the Southeast Health Center and the People's Health Center, which are referred to by the Employer as two of several facilities which comprise the Employer's "Beltway" facilities. As indicated in the original decision herein, Employer Exhibit 55 identifies 22 additional Beltway facilities which provide medical services, and which are not located on the campuses of IU, Riley or Methodist Hospitals.<sup>8</sup> The record does not identify the number of employees who provide service and repair at these facilities, and the equipment located there; the job classifications which they occupy; and whether they are members of any of the same departments in which members of the skilled maintenance unit work. The evidence does indicate, however, that the Maintenance Technicians who work at the Southeast and People's Health Centers are not members of the Facilities Department. These two disputed Technicians are also supervised by individuals who are not members of the Facilities Department. While these employees share the same job description as the Maintenance Technicians assigned to Methodist, IU and Riley, the Director of the Facilities Department who testified at hearing, possessed no personal knowledge of the work these two employees perform.

Since the evidence is insufficient to make a reasoned decision concerning the proper unit placement of the Maintenance Technicians who work at the Southeast Health Center and the People's Health Center, and since they comprise less than 1% of the unit found appropriate herein, the Maintenance Technicians shall be permitted to vote in the election ordered herein, subject to challenge.

For the first time in its supplemental brief, the Employer characterizes the unit which it seeks -- skilled maintenance employees located at the three hospitals, plus three Radiological Service Engineers who work at Wishard and the two Maintenance Technicians who work at the two health centers -- as an "employer-wide" unit. At no time during the hearing or in its post-hearing brief did the Employer assert that this group of employees comprised an employer-wide unit, nor does the evidence support such a finding. As mentioned above, in addition to the three hospitals which are the subject of the instant petition, Clarian operates at least 24 centers in the greater Indianapolis metropolitan area which provide health services. The record, however, does not provide information concerning the nature of the services rendered by these centers, or the employees who work at them.<sup>9</sup> Thus, it is impossible to conclude from the record that only the two Technicians who work at the Southeast and People's Health Centers, plus the three

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<sup>8</sup> See Footnote five of the Decision and Direction of Election.

<sup>9</sup> The evidence adduced at hearing was insufficient to determine whether or not Southwest or People's Health Centers, are in fact, acute care facilities. In response to leading questioning by Employer's counsel Morris testified that Beltway facilities were acute care facilities, at which surgery was performed. However, when specifically questioned about the two facilities, he admitted that he did not know what services were offered or if surgery was performed. At the time of the original hearing, the Employer did not urge the inclusion of these employees in its proposed unit.

employees who work at Wishard, and members of the petitioned unit, comprise an employer-wide unit.

#### IV. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Union of Operating Engineers, Local Union No. 103, AFL-CIO.

#### V. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

#### VI. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359

(1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before June 10, 2005. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

## VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 17, 2005.

SIGNED at Indianapolis, Indiana, this 3rd day of June, 2005.

Rik Lineback  
Regional Director  
National Labor Relations Board  
Region 25  
Room 238, Minton-Capehart Building  
575 North Pennsylvania Street  
Indianapolis, IN 46204-1577

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